

Commissioner for Patents

### **REMARKS**

Claims 3 and 5-8 remain in the application.

On page 5 of the Office action, the Examiner provides a response to arguments. According to the Examiner, the claims directed to an apparatus must be distinguished from the prior art in terms of structure rather than function.

In a previous response, the Applicants have clearly emphasized that the medullary caliper of Ellis is strictly limited to being used to measure a width of the intramedullary canal and a depth of insertion. The medullary caliper of Ellis is not described as being usable in any way with a computer-assisted surgery system. The caliper of Ellis is strictly a mechanical device.

As for Brosseau, the Applicants acknowledge that Brosseau teaches computer-assisted surgery. However, the present application clearly teaches and now claims the use of a apparatus to obtain an axis of an intramedullary canal for its subsequent tracking. Accordingly, combination claim 3 now features limitations pertaining to a user interface that produces data related to an axis of the intramedullary canal, which axis is obtained from the insertion of the apparatus in the intramedullary canal, and from a tracking of the detectable device on the apparatus. This is not taught in any way by Ellis or Brosseau. Both these references fail to teach the insertion of a tool inside the intramedullary canal to provide an output related to a tracking of the axis of the intramedullary canal. This concept, now in the form of a structural limitation, is simply not taught by the prior-art references.

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In view of the above amendments and remarks, this application is considered to be in condition for allowance, and early notice to that effect is earnestly solicited.

Respectfully submitted,  
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By:

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(Date)

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